In the High Court of Punjab and Haryana at Chandigarh.

CWP No.13212 of 2005

Date of decision: 19.12.2007

Tilak Raj ... Petitioner

Versus

Punjab State Co-operative Societies through its

Registrar and another.

... Respondents

Present: Mr.Deepak Nayar, Advocate,for the petitioner.

Mr.RK Sharma, Advocate, for the respondents.

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PERMOD KOHLI, J. (Oral):

The petitioner was serving as a Weaving Technician with respondent No.1, Society. The Society came out with a Voluntary Retirement Scheme for its employees which was circulated on 24.02.2003. The petitioner applied for his Voluntary Retirement on 26.08.2004 and his request was accepted vide order 23.03.2005 and he was retired from service with effect from 31.03.2005. It is, however, mentioned in the order that the dues payable under the scheme shall be released to him within 60 days from the date of retirement as per Rule 7 of the said scheme. On the date of retirement i.e. 31.03.2005, the impugned order dated 31.03.2005 (Annexure P-4) was passed whereby earlier order dated 23.03.2005 retiring the petitioner from service, was modified and it was directed that the dues payable under the scheme shall be released to him subject to the decision of

the pending inquiries against him.

Aggrieved of this order, the petitioner filed the present writ petition. It is stated that in his application for Voluntary Retirement under the Scheme, the petitioner specifically indicated against Clause 14 that disciplinary proceedings are pending against him. He has also disclosed that minor punishment has been awarded to him during the service. It has been argued on behalf of the petitioner that the petitioner never concealed any fact from the respondents. Learned counsel for the petitioner has also placed reliance upon the "Note Appended" to the Scheme, which reads as under:-

> "Note:
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> In case disciplinary action is pending against an employee, who has sought Voluntary Retirement, the disciplinary authority shall, after considering all facts, convey to the Competent Authority whether the request of the employee should be accepted or not. In case the disciplinary authority decides that the request of such an employee for Voluntary Retirement be not accepted, the same shall be communicated to the employee in writing and he shall have a right to make an appeal as provided under Section 9 (v)."

This note clearly indicate that the respondents were entitled to refuse the request of the petitioner, if so desired by the Disciplinary Authority in the event any disciplinary proceedings were pending against him. Admittedly, the respondents accepted the request of the petitioner for Voluntary Retirement without any reservation or condition as is evident from the order dated 23.03.2005 (Annexure P-3).

In the written statement filed, it is mentioned that while working as Incharge, Production Centre, Amritsar, the petitioner has committed various acts of omission and Commission, due to which disciplinary action was initiated against him. It is also stated that on the basis of the Special Audit Report, recovery proceedings have been initiated against the petitioner.. It is, however, stated that no disciplinary proceedings were pending at the time of his retirement. The only ground for modification of the order is that the respondents have initiated recovery proceedings against the petitioner under the provisions of The Punjab Co-operative Societies Act, 1961. It is further mentioned that complaints and the Special Audit Report were pending before the Enquiry Officers appointed by the Registrar, Cooperative Societies, Punjab,Chandigarh, against the petitioner under the provisions of the Act, when order dated 23.03.2005 (Annexure P-3) was passed.

I have heard the learned counsel for the parties at length.

Voluntary Retirement Scheme itself provided for acceptance or refusal of the request for Voluntary Retirement. The employer i.e.

respondent No.1 was not under any obligation to accept the request of the petitioner in view of the pendency of the proceedings against him before the Registrar,Cooperative Societies, Punjab,Chandigarh, but for whatever reason the request has been accepted without any condition or reservation. It is also admitted in the written statement that no disciplinary proceedings were/are pending against the petitioner, though proceedings before the Registrar, Cooperative Societies, Punjab,Chandigarh, were pending which are quasi judicial in nature. Under the present circumstances, the condition imposed in the modified order dated 31.03.2005, Annexure P-4, is totally unwarranted and illegal. The proceedings on the basis of the Special Audit Report are for recovery and respondent-Society is entitled to recover the amount in the event any award is passed in its favour and against the petitioner but pendency of these proceedings cannot be made a ground for denying the retiral benefits particularly under the Voluntary Retirement Scheme when the request of the petitioner has been accepted unconditionally.

For the foregoing reasons, I quash the order dated 31.03.2005 (Annexure P-4) whereby the condition has been incorporated for release of the retiral dues after the decision of the pending enquiry. Since the respondents have illegally with-held the retiral benefits of the petitioner, he shall be entitled to the interest at the rate of 4% per annum on the amount due, after the expiry of 60 days from the date of his retirement till the amount is actually paid. Let all the retiral benefits be paid to the petitioner within a period of four months from today.

With these observations, present writ petition is allowed with no order as to costs.

19.12.2007. (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter? YES/ NO